

Paul J. Lawrence
Kymberly K. Evanson
PACIFICA LAW GROUP
1191 2nd Avenue, Suite 2000
Seattle, Washington 98101-3404
Tel: (206) 245-1700
Fax: (206) 245-1750

Robert N. Michaelson
Eric T. Moser
RICH MICHAELSON MAGALIFF MOSER, LLP
340 Madison Avenue, 19th Floor
New York, New York 11073
Tel: (212) 220-9404
Fax: (212) 913-9642

Attorneys for Washington State Tobacco Settlement Authority

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re:

LEHMAN BROTHERS HOLDINGS, INC.,
et al.,

Debtors.

Chapter 11

Case No. 08-13555 (SCC)

(Jointly Administered)

**DECLARATION OF PAUL J. LAWRENCE IN SUPPORT OF WASHINGTON STATE
TOBACCO SETTLEMENT AUTHORITY'S MOTIONS IN LIMINE**

I, Paul J. Lawrence, declare as follows:

1. I am a partner at Pacifica Law Group LLP, counsel of record for the Washington State Tobacco Settlement Authority ("TSA"), in the above-captioned matter. I am over the age of 18, am competent to testify, and offer this declaration based on my personal knowledge.
2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the deposition of

Samuel M. Gruer, taken in this litigation on March 6, 2014.

DECLARATION OF PAUL J. LAWRENCE IN
SUPPORT OF WASHINGTON STATE TOBACCO
SETTLEMENT AUTHORITY'S MOTIONS IN
LIMINE - 1

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the deposition of David F. Babbel, taken in this litigation on March 7, 2014.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Seattle, Washington this 23rd day of October, 2014.

By /s/ Paul J. Lawrence
Paul J. Lawrence, WSBA # 13557
Admitted Pro Hac Vice
Attorney for Washington State Tobacco
Settlement Authority

DECLARATION OF PAUL J. LAWRENCE IN
SUPPORT OF WASHINGTON STATE TOBACCO
SETTLEMENT AUTHORITY'S MOTIONS IN
LIMINE - 2

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2014, I caused the document to which this Certificate is attached to be served upon the following:

Jayant W. Tambe
Laura W. Sawyer
Jennifer L. Del Medico
Benjamin Rosenblum
Jones Day
222 East 41st Street
New York, New York 10017
Email: jtambe@jonesday.com
Email: lwsawyer@jonesday.com
Email: jdelmedico@jonesday.com
Email: brosenblum@jonesday.com
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

- ☐ via facsimile
- ☐ via overnight courier
- ☐ via first-class U.S. mail
- ☐ via email
- ☒ via electronic court filing
- ☐ via hand delivery

Attorneys for the Debtors and Debtors in Possession

Signed at Seattle, Washington this 23rd day of October, 2014.

/s/ Kymberly K. Evanson
Kymberly K. Evanson
Attorney for Washington State Tobacco
Settlement Authority

DECLARATION OF PAUL J. LAWRENCE IN
SUPPORT OF WASHINGTON STATE TOBACCO
SETTLEMENT AUTHORITY'S MOTIONS IN
LIMINE - 3

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re: Chapter 11
LEHMAN BROTHERS HOLDINGS, Case No. 08-13555
INC., et al, (JMP)
Debtors. (Jointly Administered)
-----x
March 6, 2014
10:01 a.m.

Deposition of SAMUEL M. GRUER,
pursuant to Notice, at the offices of Jones
Day, 222 East 41st Street, New York, New
York, before David Levy, CSR, RPR, CLR, a
Notary Public of the State of New York.

1 Gruer

2 You can answer.

3 A. I determined -- I estimated -- sorry.
4 I attempted to calculate the value of the
5 transaction. The loss that I calculated
6 specifically was the 7.7B loss amount which is
7 included, you know, in the valuation.

8 As a legal matter, whether or not that
9 represents a loss or not, I was not asked to opine
10 on that.

11 Q. So let's put aside the 7.7B. We'll
12 talk about that specifically.

13 A. Sure.

14 Q. But have you read a copy of the
15 Tobacco Settlement Authority RFA?

16 A. Yes.

17 Q. And you've seen the definition of the
18 termination amount in that agreement?

19 A. I have.

20 Q. And did you review that for purposes
21 of your report?

22 A. Yes.

23 Q. And do you understand that the first
24 step in the process to come to a termination
25 amount is to seek bids from dealers for a

1 Gruer

2 no, I don't.

3 Q. Do you have any sense of the magnitude
4 of the difference between the interest actually
5 earned by the TSA since the Lehman default
6 compared to the guaranteed rate that Lehman was to
7 provide under the reserve fund agreement?

8 A. Generically, I -- I'm aware of
9 their -- how they've invested the money. I don't
10 know specifically how they've invested the money
11 during that time period.

12 Q. Do you -- go ahead.

13 A. But again, my -- my charge was to
14 value the agreement as of March 25th, 2009 and, as
15 a result, whatever they did after that date played
16 no role, nor should it play a role, in how I
17 valued the agreement as of that date.

18 Q. So whatever the actual difference is
19 between the amount earned by TSA in its investment
20 of reserve funds since Lehman's default, and the
21 amount that Lehman had agreed to pay in the RFA,
22 that number is irrelevant to your opinion,
23 correct?

24 MR. TAMBE: Objection to the form of
25 the question.

1 Gruer

2 his or her experience, to your knowledge.

3 A. Not to my knowledge.

4 Q. So in paragraph 49, you indicate a
5 calculation of a mid market value, do you see
6 that?

7 A. I do.

8 Q. By using the terminology "mid market
9 value," what does that tell us?

10 A. That is the value of the agreement and
11 before any adjustments for dealer profit, before
12 any adjustments for credit reserves, and in this
13 case, specifically, it's before adjusting for the
14 7.7B loss amount.

15 Q. And certainly before any adjusting for
16 other costs associated, third-party costs
17 associated with a trade, for example.

18 A. Correct.

19 Q. Does the termination amount definition
20 in the RFA use the terminology, "Mid market
21 value"?

22 A. It does not.

23 Q. And in terms of the quotation process
24 that is identified in the termination amount, the
25 dealer bid that you would try to get back would

1

2

C E R T I F I C A T E

3

STATE OF NEW YORK)

4

: ss.

5

COUNTY OF NEW YORK)

6

7

I, DAVID LEVY, CSR, a Shorthand

8

Reporter and Notary Public within and for

9

the State of New York, do hereby certify:

10

That SAMUEL M. GRUER, the witness

11

whose deposition is hereinbefore set forth,

12

was duly sworn by me and that such

13

deposition is a true record of the testimony

14

given by the witness.

15

I further certify that I am not

16

related to any of the parties to this action

17

by blood or marriage, and that I am in no

18

way interested in the outcome of this

19

matter.

20

IN WITNESS WHEREOF, I have hereunto

21

set my hand this 9th day of March 2014.

22

23

24

DAVID LEVY, CSR, RPR, CLR

25

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: LEHMAN BROTHERS)	Chapter 11 Case
)	No. 08-13555
HOLDINGS, INC., et al.,)	(JMP)
)	(Jointly
Debtors.)	Administered)
)	

DEPOSITION OF DAVID F. BABEL
New York, New York
Friday, March 7, 2014

Reported by:
PATRICIA A. BIDONDE, RPR

1 D. Babbel

2 Q. I'm not suggesting you know. I'm
3 just asking how do you determine what their
4 total losses will be. As you said, there may
5 not be losses. You have to go through the
6 valuation first. How do you value what the
7 total losses will be?

8 A. You look at what they could have
9 lost in value. That's how I would do it. But
10 I'm not the damages expert. I don't know the
11 definition of damages.

12 They're talking here about a
13 termination amount. I know something about
14 valuing swaps, fixed pieces, and floating
15 pieces.

16 My testimony is really restricted
17 to methodology and how swaps are -- take
18 advantage of or valued by forward rates of
19 interest. So I wasn't asked to really do
20 this, what you're asking me now.

21 Q. Okay. Fair enough. I do need
22 that back though.

23 A. Sure. (Handing.)

24 Q. Have you ever been asked to give
25 an opinion about a party's total losses?

1 D. Babbel

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

5 : ss.

6 COUNTY OF NASSAU)

7

8 I, PATRICIA A. BIDONDE, a Notary
9 Public within and for the State of New
10 York, do hereby certify:

11 That DAVID F. BABBEL, the witness
12 whose deposition is hereinbefore set
13 forth, was duly sworn by me and that
14 such deposition is a true record of the
15 testimony given by the witness.

16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, and that I
19 am in no way interested in the outcome
20 of this matter.

21 IN WITNESS WHEREOF, I have
22 hereunto set my hand this day,
23 March 17, 2014.

24

25 _____
PATRICIA A. BIDONDE, RPR